IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY NINETH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

and
THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 25537 of 2003

Between:

M/s. Sri Ramalingeswara Modern Rice Mill, Kakinada, E.G. Dist., rep by its Managing Partner Sathi Krishna Reddy, S/o. Pereddy, age : 47 years

... PETITIONER

AND

1. The Commericial Tax Officer, Jagganaickpur,

   Kakinada, E.G. Dist.
2. The Appellate Deputy Commissioner of Commericial Taxes

   Visakhapatnam.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction particularly in the nature of writ of mandamus declaring the assessment and levy of sales tax under the provisions of A.P. General Sales Tax Act 1957 on the turnovers relating to subsequent sales of gunnies made to Food Corporation of India and Rural Development cess collections made by the Food Corporation under Rural Development Act, 1996 in assessment order 2899/1997-98 as confirmed in the appeal order dated 28-11-2000 and 24-3-2003 in Appeal No. E-535/00-01 made by the Commercial Tax Officer, Jagannaikpur circle, Kakinada and Appellate Deputy Commissioner of Commercial Taxes, Visakhapatnam as illegal, arbitrary without authority of law and contrary to the judgement of Supreme Court in 74 STC page 379 and G.O.Ms. No. 952 dated 10-9-2003 and grant such other relief or reliefs as are deemed fit and proper in the circumstances of the case

Counsel for the Petitioner:MR.M.V.J.K.KUMAR

Counsel for the Respondents: GP FOR COMMERCIAL TAX

WRIT PETITION NO : 25556 of 2003

Between:

M/s.Sri Ramalingeswara Modern Rice Mill,

Kakinada, East Godavari District,

Represented by its Managing Director
Sathi Krishna Reddy,S/o. Pereddy.

... PETITIONER

AND

The Commercial Tax Officer, Jagganaickpur,

Kakinada, East Godavari District.

...RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction particularly in the nature of Writ of Mandamus declaring the assessment and levy of sales tax under the provisions of Andhra Pradesh General SalesTax Act 1957 on the turnovers relating to subsequent sales of gunnies made to Food Corporation of India and Rural Development cess collections made by the Food Corporation under Rural Development Act, 1996 in assessment orders 2899/2000-2001 and 2899/2001-2002 dated 27-10-2002 and 17-2-2003 made by the Commercial Tax Officer, Jagannaikpur Circle, Kakinada as illegal, arbitrary without authority of law and contrary to the judgment of Supreme Court in 74 STC page 379 and G.O.Ms.NHo.950, 952 dated 10-9-2003.

Counsel for the Petitioner:MR.M.V.J.K.KUMAR

Counsel for the Respondent: GP FOR COMMERCIAL TAX

WRIT PETITION NO : 26020 of 2003

Between:

1. Rajarajeswara Par Boiled Rice Industrices & Export Ltd.,

   Being rep by Managing Director, Pothuganti Ramesh,
   Komarabanda (V) Kodad (M) Nalgonda District A.P.,
2. Rajarajeswari Parboiled Rice Industry, being rep by
   rep by Managing Partner, Originate Srinivasa Rao
   Komarabanda (V) Kodad (M) Nalgonda District A.P.,
3. Sri Venkata Ramana Parboiled Modern Rice Mill, Being
   rep by Managing Partner Pulichintala Narasimha Reddy
   Miryalaguda Road Huzurnagar (V) & (M) Nalgonda Dist.AP.
4. Sri Satyanarayana Parboiled Modern Rice & G.N. Oil Mill,

   beign rep by Managing Partner, Repala Prasada Rao

   Huzurnagar road, Kodad (V) & (M) Nalgonda (Dt)
5. Vasundhara Rice Products Pvt., Limited

   being rep by Managing Director- Ranganath,

   Tammarabandapalem(V), Kodad (M),Nalgonda District AP

... PETITIONERS

AND

1. Ministry of Consumer Affairs, Food & Public Distribution,

Governmet of India being, rep by Secretary,

Krishi Bhavan, New Delhi

2 Food Corporation of India, being rep by
Managing Director, Khadhya Bhavan,

Barkamba Lane, New Delhi

3 Food Corporation of India, Being rep by its Senior

Regional Manager HACA Bhavan,
Opp Assembly Buildings, Hyderabad

4 Food Corporation of India being rep by District Manager,

Ramagiri, Nalgonda, Nalgonda District, AP

5 Government of Andhra Pradesh,

being rep by Secretary, Secretariat Buildings,

Saifabad, Hyderabad

6 Ministry of Law and Legislative Affairs,

Governemnt of Andhra Pradesh,
being rep by Secretary, Secretariat, Buildings,

Saifabad Hyderabad

7 Ministry of Consumer Affairs, Food & Civil supplies

Govt of Andhra Pradesh, being rep by Secretary,

Secretariat Buildings, Saifabad Hyderabad

8 Commissioner of Civil Supplies,

Govt of Andhra Pradesh Civil Supplies Bhavan,
Erramanzil, Hyderabad

9 Ministry of Commercial Taxes,

Governemnt of Andhra Pradesh, being rep by Secretary
Secretariat Buildings, Saifabad, Hyderabad

10 Commissioner of Commercial Taxes,

Commercial Taxes Buildings,

Bhavan, Nampally, Hyderabd

11 Commercial Tax Officer, Kodad Circle,

Millika Towers, Vijayawada Road, Kodad-508 206
Nalgonda (district A.P.,

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to

issue Writ order or direction more particularly one in the nature of Writ of mandmaus declaring the action of the Respondents 1,2,3,4,5,6,7, 8 and 9 with out paying any sales stage tax of petitioner @ 4% on the turnover of Gunnies Supplied to 2nd respondent for the Assessment Year 2000-2001 is illegal, arbitrary, unjust and contrary to the provisions of APGST Act 1957 and to principals of natural justice and to direct the respondents 1 to 10 to resolve the problem of levy of Sales Tax on Second and Subsequent sale of Gunnies supplied to 2nd respondent neither by payment of tax nor by exemption of Tax on such sale which has levied by the 11th respondents under Section 6-C of the APGST Act 1957 in the Assessments of the petitioners for the Year 2000-2001 passed in proceedings Nos. 16250 dt 26-07-2003 15757 dt 26-07-2003 14727 dt 16-07-2003 14564 dt 21-07-2003 and 16244 dt 01-11-2002 consequently to direct the 2nd 3rd and 4th respondents to pay the incurred sales tax of the purchase @ 4% to the petitioners with interest under provisions of Section 4 and 5 of the "The interest on Delayed payments to small Scale and Ancillary Industrial Under takings Act 1993 with the monthly rests @ one and half percent of the prime lending rate charged by the State bank of India to its best borrowers and grant other relief if any as deemed fit proper in the circumstances of the case in the interest of justice

Counsel for the Petitioners : MR.KUNUKUDURGAPRASAD

Counsel for the Respondent No.1: MR.ARAJASHEKAR REDDY (SC FOR CG)

Counsel for Respondents 2 to 4:MR.B.ANJANEYULU, SC FOR FCI

Counsel for Respondents 5 to 11:THE SPL.G.P.FOR COMMERCIAL TAXES

WRIT PETITION NO : 5092 of 2004

Between:

M/s N.S.N.Reddy & Others Conts.M/s Sri Venkata Padmavathi Raw and Boiled Rice Mill,

Turangi, Near Kakinada rep.by its Managing partner Sri Nallamilli Satyanarayana Reddy,
S/o Sri Venkata Reddy, aged about 63 years.

... PETITIONER

AND

1 The Commercial Tax Officer, Jagannaikpur Circle, Kakinada.
2 The District Manager, Food Corporation of India, Kakinada.
3 The Senior Regional Manager, Food Corporation of India, Regional Office, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, Order or direction particularly in the nature of Writ of Mandamus declaring that the provisions of Section-6C read with Clause-(i) of Entry-19 of the First Schedule to the Andhra Pradesh General Sales Tax Act employing the specific expression of packing material that is to say used in Clause-(i) as not applicable to gunny bag purchased on payment of tax locally and sold in the State to the Food Corporation of India or others in assessment orders and therefore declaring the assessment and levy of tax under the Act in the assessment orders dated 28-01-2004 and 15-03-2003 as without jurisdiction without authority of law and contrary to Section-6C of the Act or alternately directing the second respondent to directly remit the sales tax component in terms of assessment orders for the above mentioned assessment years in respect of the sale of gunnies made to it directly to the first respondent in the event of the petitioner's claim for exemption from tax on subsequent sale of gunnies being rejected, in terms of G.O.Rt.No.49 dated 12-05-2002 issued by the Government of Andhra Pradesh and grant such other relief or reliefs as are deemed fit and proper in the circumstances of the case

Counsel for the Petitioner:MR.M.V.J.K.KUMAR

Counsel for the Respondent NO.1: GP FOR COMMERCIAL TAX

Counsel for the Respondents 2 & 3: SMT.CH.LAKSHMI KUMARI

WRIT PETITION NO : 5130 of 2004

Between:

M/s.Sri Lakshmi Satyanarayana Raw and Boiled Rice Mill,

Penuguduru, Near Kakinada,

rep.by its Managing partner.

... PETITIONER

AND

1 The Commercial Tax officer, Jagannaikpur Circle,Kakinada.
2 The District Manager, Food Corporation of India, Kakinada.
3 The Senior Regional Manager, Food Corporation of India,

Regional office,Hyderabad.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction particularly in the nature of writ of Mandamus declaring that the provisions of section-6C read with Clause-(i) of Entry-19 of the First Schedule to the Andhra Pradesh General Sales Tax Act employing the specific expression of packing material that is to say used in clause-(i) as not applicable to gunny bag purchased on payment of tax locally and sold in the state to the Food Corporation of India or others in assessment years 2001-2002 and 2002-2003 as evident from assessment orders and therefore declaring the assessment and levy of tax under the Act in the assessment orders dt.28-1-04 and 15-03-2003 as without jurisdiction without authority of law and contrary to section-6C of the Act or alternately directing the second respondent to directly remit the sales tax component in terms of assessment orders for the above mentioned assessment years in respect of the sale of gunnies made to it directly to the first respondent in the event of the petitioner's claim for exemption from tax on subsequent sale of gunnies being rejected, in terms of G.O.R.T.No.49 dated 12-05-2002 issued by the Government of Andhra Pradesh and grant such other relief or reliefs as are deemed fit and proper in the circumstances of the case.

Counsel for the Petitioner:MR.M.V.J.K.KUMAR

Counsel for the Respondent NO.1: GP FOR COMMERCIAL TAX

Counsel for the Respondents 2&3: MR.B.ANJANEYULU

WRIT PETITION NO : 10695 of 2004

Between:

Sri Sita Raman Janeya Rice Mill S.Muoppavaram -534 306
Chagallu Mandal West Godavari District,

represented by its Proprietor sri Garapati Babu Rao
S/o Satyanarayana , Aged 50 years

... PETITIONER

AND

1 The Commercial Tax officer NIDADAVOLE
West Godavari District
2. The District Manager Food Corporation of India
Eluru West Godavari District
3. The Senior Regional Manager Food Corporation of

India Regional office, Hyderabad

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, order or direction particularly in the nature of Writ of Mandamus declaring that the provisions of Section-6C read with Clause-(i) of Entry-19 of the First Schedule to the Andhra Pradesh General Sales Tax Act employing the specific expression of packing material that is to say used in Clause-(i) as not applicable to gunny bag purchased on payment of tax locally and sold in the State to the Food Corporation of India or others in assessment year 2001-2002 as evident from assessment orders and therefore declaring the assessment and levy of tax under the Act in the assessment orders dt 18-02-2003 as without jurisdiction, without authority of law and contrary to Section-6C of the Act or alternately directing the Second and third respondents to remit the sales tax component in terms of assessment orders for the above mentioned assessment years in respect of the sale of gunnies made to it directly to the first respondent in the event of the petitioner's claim for exemption from tax on subsequent sale of gunnies being rejected, in terms of G.O.R.T. No. 49 dated 12-05-2002 issued by the Government of Andhra Pradesh and grant such other relief or reliefs as are deemed fit and proper in the circumstances of the case

Counsel for the Petitioner:MR.M.V.J.K.KUMAR

Counsel for the Respondent NO.1: GP FOR COMMERCIAL TAX

Counsel for the Respondents 2&3: MR.B.ANJANEYULU

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WRIT PETITION NO : 10699 of 2004

Between:

M/s. K.V.R. TRADING COMPANY, NIDADAVOLE, West Godavari District, rep by its Managing Partner Mr. Kotla Suryanarayana Murthy,
S/o. Venkata Rao, aged 44 years

... PETITIONER

AND

1 The Commercial Tax Officer, NIDADAVOLE.
West Godavari District.
2 The District Manager, Food Corporation of India,
ELURU, West Godavari District.
3 The Senior Regional Manager, Food Corporation of India,
Regional Office, HYDERABAD.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction particularly in the nature of Writ of Mandamus declaring that the provisions of Section-6C read with Clause-(i) of Entry-19 of the First Schedule to the A.P. General Sales Tax Act employing the specific expression of packing material that is say used in Clause-(i) as not applicable to gunny bag purchased on payment of tax locally and sold in the State to the Food Corporation of India or others in assessment years 2000-2001 and 2001-2002 as evident from assessment orders and therefore declaring the assessment and levy of tax under the Act in the assessment order dt. 20-03-2002 and 21-03-2003 as without jurisdiction, without authority of law and contrary to section - 6C of the Act or alternately directing the terms of assessment orders for the above mentioned assessment years in respect of the sale of gunnies made to it directly to the first respondent in the event of the petitioner's claim for exemption from tax on subsequent sale of gunnies being rejected, in terms of G.O.R.T.No.49 dated 12-05-2002 issued by the Government of Andhra Pradesh and grant such other relief or reliefs as are deemed fit and proper in the circumstances of the case. 2000-2001 and 2001-2002

Counsel for the Petitioner : MR.M.V.J.K.KUMAR

Counsel for the Respondent NO.1: GP FOR COMMERCIAL TAX

Counsel for the Respondents 2&3: MR.D.SRINIVAS

WRIT PETITION NO : 10700 of 2004

Between:

Sri Veera Venkata Traders, Unagatla Chagallu Mandal,

rep by Proprietrix, Pragallapati Pateswari

W/o P. Venkata Subba Rao

... PETITIONER

AND

1. The Commercial Tax Officer,

   Nidadavole, West Godavari District
2 The District Manager, Food Corporation of India,

   Eluru West Godavari District
3 The Senior Regional Manager, Food Corporation of India,

   Regional Office, Hyderabad

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, order or direction particularly in the nature of Writ of Mandamus declaring that the provisions of Section-6C read with Clause-(i) of Entry-19 of the First Schedule to the Andhra Pradesh General Sales Tax Act employing the specific expression of packing material that is to say used in Clause-(i) as not applicable to gunny bag purchased on payment of tax locally and sold in the State to the Food Corporation of India or others in assessment year 2001-2002 as evident from assessment orders and therefore declaring the assessment and levy of tax under the Act in the assessment orders dt 18-02-2003 as without jurisdiction, without authority of law and contrary to Section-6C of the Act or alternately directing the Second and third respondents to remit the sales tax component in terms of assessment orders for the above mentioned assessment years in respect of the sale of gunnies made to it directly to the first respondent in the event of the petitioner's claim for exemption from tax on subsequent sale of gunnies being rejected, in terms of G.O.R.T. No. 49 dated 12-05-2002 issued by the Government of Andhra Pradesh and grant such other relief or reliefs as are deemed fit and proper in the circumstances of the case

Counsel for the Petitioner:MR.M.V.J.K.KUMAR

Counsel for the Respondent NO.1: GP FOR COMMERCIAL TAX

Counsel for the Respondents 2&3: MR.D.SRINIVAS

WRIT PETITION NO : 11070 of 2004

Between:

Sri Rama Krishna Boiled & Raw Rice Mill, Turangi, E.G.Dist., rep.by its Managing partner Karri Nagi Reddy S/o.venkata Reddy, age;45 yrs,

... PETITIONER

AND

1. The Commercial Tax officer, Jagganaikpur Circle,Kakinada,E.G.Dist.
2. The Dist.Manager, Food Corporation of India, Kakinada.
3. The Senior Regional Manager, Food Corporation of India,

Regional office, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction particularly in the nature of writ of Mandamus declaring that the provisions of section-6C read with clause-(i) of Entry-19 of the First Schedule to the Andhra Pradesh General Sales tax Act Employing the specific expression of packing material that is to say used in clause-(i) as not application to gunny bag purchased on payment of tax locally and sold in the state to the food corporation of India or others in assessment year 2001-2002 (APGST)as evident from assessment orders and therefore declaring the assessment and levy of tax under the Act in the assessment order dt.20-03-2003 as without jurisdiction, without authority of law and contrary to section-6C of the Act or alternately directing the second and third respondents to remit the sales tax component in terms of assessment orders for the above mentioned assessment years in respect of the sale of gunnies made to it directly to the first respondent in the event of the petitioner's claim for exemption from tax on subsequent sale of gunnuies being rejected, in terms of G.O.R.T.No.49 dated 12-05-2002 issued by the Government of Andhra Pradesh and grant such other relief or reliefs as are deemed fit and proper in the circumstances of the case.

Counsel for the Petitioner:MR.M.V.J.K.KUMAR

Counsel for the Respondent NO.1: GP FOR COMMERCIAL TAX

Counsel for the Respondents 2&3: MR.D.SRINIVAS

WRIT PETITION NO : 11208 of 2004

Between:

Sri Venkateswara Rice Mill Sankarapuram West Godavari

District rep by Managing Partner
gamini Somasekara Rao S/o Venkataratnam,

... PETITIONER

AND

1. The Commercial Tax Officer, Nindavole West Godavari

   District
2 The District Manager, Food Corporation of India, Eluru

   West Godavari District
3 The Senior Regional Manager, Food Corporation of

   India, Regional Office, Hyderabad

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, order or direction particularly in the nature of Writ of Mandamus declaring that the provisions of Section -6C read with Clause-(1) of Entry-19 of the first Schedule to the Andhra Pradesh General sales Tax Act employing the specific expression of packing material that is to say used in Clause-(1) as not applicable to gunny bag purchased on payment of tax locally and sold in the State to the food Corporation of India or others in assessment, year 2000-2001 and 2001-2002 as evident from assessment orders and therefore declaring the assessment and levy of tax under the act in the assessment order dt 20-3-2003 and 21-3-2003 as without jurisdiction, without authority of law and contrary to Section-6C of the Act or alternately directing the Second and third respondents to remit the sales tax component in terms of assessment orders for the above mentioned assessment years in respect of the sale of gunnies made to it directly to the first respondent in the event of the petitioner's claim for exemption from tax on subsequent sale of gunnies being rejected, in terms of G.O.Rt No. 49 dated 12-05-2002 issued by the Government of Andhra Pradesh and grant such other relief or reliefs as are deemed fit and proper in the circumstances of the case

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Counsel for the Petitioner:MR.M.V.J.K.KUMAR

Counsel for the Respondent NO.1: GP FOR COMMERCIAL TAX

Counsel for the Respondents 2&3: MR.D.SRINIVAS

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WRIT PETITION NO : 11526 of 2004

Between:

M/s. Sri Venkateswara Rice Mill, Samisragudem,

Nidadavole Mandalam, West Godavari District,

rep by Partner Sri Pachipulusu Adinarayana

S/o Satyanarayana

... PETITIONER

AND

1. The Commercial Tax Officer,

   Nidadavole West Godavari District
2. The District Manager, Food Corporation of India,

   Eluru, West Godavari District
3. The Senior Regional Manager Food Corporation of India,
   Regional Office, Hyderabad

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, order or direction particularly in the nature of Writ of Mandamus declaring that the provisions of Section-6C read with Clause-(i) of Entry-19 of the First Schedule to the Andhra Pradesh General Sales Tax Act employing the Specific Expression of packing material that is to say used in Clause-(i) as not applicable to gunny bag purchased on payment of tax locally and sold in the state tot he Food corporation of India or others in assessment year 2001-2002 and 2000-2001 as evident from assessment orders and therefore declaring the assessment and levy of tax under the Act in the assessment order dt 23-03-2002 and 22-03-2003 as without jurisdiction without authority of law and contrary to Section-6Cof the Act as well as the judgment of the Honourable Court in 74 STC P. 979 or alternately directing the second respondent to directly remit the sales tax component in terms of assessment orders for the above mentioned assessment years in terms of assessment orders for the above mentioned assessment years in respect of the sale of gunnies made to it directly to the first respondent in the event of the petitioner's

claim for exemption from tax on subsequent sale of gunnies being rejected, in terms of G.O.Rt No. 49 dated 12-05-2002 issued by the Government of Andhra Pradesh and grant such other relief or reliefs as are deemed fit and proper in the circumstances of the case.

Counsel for the Petitioner:MR.M.V.J.K.KUMAR

Counsel for the Respondent NO.1: GP FOR COMMERCIAL TAX

Counsel for the Respondents 2&3: MR.D.SRINIVAS

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WRIT PETITION NO : 11527 of 2004

Between:

M/s Kotha Krishna Murthy & Gudiwada Narsimha Rao & Co

Main Road, Nidadavole, West Godavari District
rep.by its Partner Kotha Veerabhadra Rao,

S/o Krishna Murthy, aged about 51 years

... PETITIONER

AND

1. The Commercial Tax Officer,

   Nidadavole, West Godavari District
2. The District Manager, Food Corporation of India, Eluru,
   West Godavari District
3. The Senior Regional Manager, Food Corporation of India,

   Regional Office, Hyderabad

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, Order or direction particularly in the nature of Writ of Mandamus declaring that the provisions of Section-6C read with Clause-(1) of Entry-19 of the First Schedule to the Andhra Pradesh General Sales Tax Act employing the specific expression of packing material that is to say used in Clause-(1) as not applicable to gunny bag purchased on payment of tax locally and sold in the State to

the Food Corporation of India or others in Assessment years 2001-2001 and 2000-2001 as evident from assessment orders and therefore declaring the assessment and levy of tax under the Act in the assessment orders dated 20-03-2002 and 24-01-2003 as without jurisdiction without authority of law and contrary to Section-6C of the Act as well as the judgment of the Hon'ble Court in 74 STC P.379 or alternately directing the second respondent to directly remit the sales tax component in terms of assessment orders for the above mentioned assessment years in respect of the sale of gunnies made to it directly to the first respondent in the event of the petitioners claim for exemption from tax on subsequent sale of gunnies being rejected, in terms of G.O.R.T.No.49 dated 12-05-2002 issued by the government of Andhra Pradesh and grant such other relief or reliefs as are deemed fit and proper in the circumstances of the case

Counsel for the Petitioner:MR.M.V.J.K.KUMAR

Counsel for the Respondent NO.1: GP FOR COMMERCIAL TAX

Counsel for the Respondents 2&3: MR.D.SRINIVAS

WRIT PETITION NO : 12403 of 2004

Between:

M/s Sri Venkateswara Modern Rice Mill, D.No.4-2-34, Nandamuru Road, Kovvuru, W.G.District
represented by its Proprietor Mallina Venkata Rao, S/o Narayana, aged about 75 years.

... PETITIONER

AND

1. The Commercial Tax Officer, Nidadavole, West Godavari District
2. The District Manager, Foor Corporation of India, Eluru, West Godavari District
3. The Senior Regional Manager, Food Corporation of India, Regional Office, Hyderabad

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, order or direction particularly in the nature of Writ of Mandamus declaring the provisions of Section-6C read with Clause-(i) of Entry-19 of the First Schedule to the Andhra Pradesh General Sales Tax Act employing the specific expression of packing material that is to say used in Clause(i) as not applicable to gunny bag purchased on payment of tax locally and sold in the State to the Food Corporation of India or others in assessment years 1999-2000 to 2001-2002 as evident from assessment orders and therefore declaring the assessment and levy of tax under the Act on the subsequent and tax suffered sale of gunnies as without jurisdiction without authority of law and contrary to Section-6C of the Act or alternately directing the second respondent to directly remit the sales tax component in terms of assessment orders for the above mentioned assessment years in respect of the sale of gunnies made to it directly to the first respondent in the event of the

petitioner's claim for exemption from tax on subsequent sale of gunnies being rejected, in terms of G.O.R.T.No.49 dated 12-5-2002 issued by the Government of Andhra Pradesh and also to declare the inclusion of Agricultural Market Fees in the turnover under the Sales Tax Act as contrary to the judgment of this Honourable Court in 7 APSTJ 265 and also contrary to the judgment of Supreme Court in 46 STC 477 and further to declare the inclusion of the sales tax component in the turnover without following the formula envisaged in Rule-6(1)(I) of the APGST Rules as held by this Honourable Court in 27 APSTJ and also inclusion of RDC collections paid by the FCI in the turnover as contrary to and in contravention with the directions of the Government of Andhra Pradesh in G.O.Ms.No.950, 951 and 952 dated 10-09-2003 and grant such other relief or reliefs as are deemed fit and proper in the circumstances of the case

Counsel for the Petitioner:MR.M.V.J.K.KUMAR Counsel for the Respondent NO.1: GP FOR COMMERCIAL TAX Counsel for the Respondents 2&3: MR.D.SRINIVAS

WRIT PETITION NO : 12636 of 2004

Between:

Sri Lakshmi Rice Mill, Brahmanagudem
Chagallu Mandal, West Godavari District,

Represented by its Managing Patner,
Atukuri Doraiah S/o Appa Rao aged 52 years

... PETITIONER

AND

1 The Commercial Tax Officer NIDADAVOLE
West Godavari District
2 The District Manager Food Corporation of India
Eluru West Godavari District
3 The Senior Regional Manager Food Corporation of India
Regional Office Hyderabad

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction particularly in the nature of Writ of Mandamus declaring that the Provisions of Section 6C read with Clause (i) of Entry-19 of the First Schedule to the Andhra Pradesh General Sales Tax Act employing the Specific expression of packing material that is to say used in Clause(i) as not applicable to gunny bag purchased on payment of tax locally and sold in the state to the Food Corporation of India or others in assessment year 2001-2002 as evident from assessment orders and therefore declaring the assessment and levy of tax Under the Act in the assessment orders dt. 18/02/2003 as without jurisdiction, without authority of law and contrary to section 6C of the Act or alternately directing the second and third respondents to remit the sales tax component in terms of

Assessment orders for the above mentioned assessment years in respect of the sale of gunnies made to it directly to the first respondent in the event of the petitioners claim for exemption from tax on subsequent sale of gunnies being rejected in terms of G.O.R.T.No.49 dt. 12/04/2002 issued by the Government of Andhra Pradesh and grant such other relief or reliefs as are deemed fit and proper in the circumstances of the cases.

Counsel for the Petitioner:MR.M.V.J.K.KUMAR

Counsel for the Respondent NO.1: GP FOR COMMERCIAL TAX

Counsel for the Respondents 2&3: MR.D.SRINIVAS

COMMON ORAL ORDER: (Per Sri Bilal Nazki , J)

Heard the learned counsel for the parties.

Although the learned counsel for the petitioners has argued the matters in detail as to whether Section 6-C of the Andhra Pradesh General Sales Tax Act, 1957 (for short “the Act”) was applicable to the facts and circumstances of the case, we are not going to deal with the arguments made by the learned counsel on the ground that the orders of assessment challenged before this Court are appealable orders. The arguments made at the Bar could be well appreciated by the appellate authority. This Court will not be in a position to appreciate the arguments as factual matters would also have to be considered in order to appreciate the arguments whether Section 6-C of the Act would apply to the facts of the present case or not.

All these writ petitions have been filed after more than a year of the order of assessment having been passed. Obviously, the petitioners had lost the right to file appeals because of limitation, therefore, the course chosen was to file writ petitions in this Court. The law cannot be defeated by taking recourse to Article 226 of the Constitution of India. Since the petitioners have efficacious remedies available under the statute, we are not entertaining these writ petitions, particularly, when these writ petitions have been filed after the period of limitation for filing the appeal

was over.

For these reasons, the writ petitions are dismissed. No costs.

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(**BILAL NAZKI, J**)

29th September, 2004.

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(**S.ANANDA REDDY, J**)

C.C. in one week.

(B/o) pan

Note: Office shall place the copies of this order in each bundle after the signatures of their Lordships.

1. The Commercial Tax Officer, Jagannaikpur Circle, Kakinada.
2. The District Manager, Food Corporation of India, Kakinada.
3. The Senior Regional Manager, Food Corporation of India,
   Regional Office, Hyderabad.

4. The Secretary, Ministry of Consumer Affairs,

Food & Public Distribution,

Government of India, Krishi Bhavan, New Delhi

5. The Managing Director,

Food Corporation of India, Khadhya Bhavan,

Barkamba Lane, New Delhi.

6. The Senior Regional Manager,

Food Corporation of India, HACA Bhavan,
Opp Assembly Buildings, Hyderabad

7. The District Manager,

Food Corporation of India,

Ramagiri, Nalgonda, Nalgonda District, AP

8. The Secretary,

Ministry of Law and Legislative Affairs,

Government of Andhra Pradesh,
Secretariat Buildings, Saifabad Hyderabad.

9. The Secretary,

Ministry of Consumer Affairs, Food & Civil supplies,

Government of Andhra Pradesh,
Secretariat Buildings, Saifabad Hyderabad.

10. Commissioner of Civil Supplies,

Govt of Andhra Pradesh, Civil Supplies Bhavan,
Erramanzil, Hyderabad.

11. The Secretary,

Ministry of Commercial Taxes,

Secretariat Buildings, Saifabad, Hyderabad.

12. Commissioner of Commercial Taxes,

Commercial Taxes Buildings,

Bhavan, Nampally, Hyderabd

13. Commercial Tax Officer, Kodad Circle,

Millika Towers, Vijayawada Road, Kodad-508 206
Nalgonda District, A.P.

14. The Commercial Tax officer,

Nidadavole, West Godavari District.

15. The District Manager Food Corporation of India
Eluru West Godavari District

16. The Appellate Deputy Commissioner of Commericial Taxes,

Visakhapatnam.

17. Two C.Cs to the G.P. for Commercial Tax,

High Court Buildings, Hyderabad (OUT)

18. Two C.Ds.

19. The Secretary, Govt.of A.P.,

Secretariat buildings, Saifabad, Hyderabad.